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May 12, 2005

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: *IP-Enabled Services Rulemaking*, WC Docket No. 04-36

Dear Ms. Dortch:

BellSouth Corporation. (“BellSouth”) submits this response to a recent ex parte from Vonage Holdings Corporation (“Vonage”) concerning the provision of 9-1-1 emergency services to Voice Over Internet Protocol (“VoIP”) customers.<sup>1</sup> In so doing, BellSouth provides an overview of the 9-1-1 infrastructure to which commercial mobile radio service (“CMRS”) providers currently have access, which Vonage claims it wants, as well as the service offering BellSouth recently made available to VoIP providers, which offers VoIP providers the same access enjoyed by CMRS providers.<sup>2</sup> BellSouth also will briefly respond to several assertions in the *Vonage Ex Parte*, which are either legally or factually flawed.

As a preliminary matter, in considering whether to require that VoIP providers make available E-9-1-1 and 9-1-1 services to their customers, the Commission should recognize the distinction between nomadic and fixed uses of VoIP. Although the *Vonage Ex Parte* seeks to confuse these different uses, BellSouth agrees with AT&T that the nomadic aspects of VoIP (as well as the assignment of “non-native” telephone numbers to VoIP subscribers) present a challenge to the 9-1-1 system, which the industry is actively working to address.<sup>3</sup> It is unrealistic to expect that these challenges will be solved and that E-9-1-1 and 9-1-1 functionality will be fully implemented for nomadic VoIP purposes by the end of this year.

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<sup>1</sup> Ex Parte Letter from William B. Wilhelm, Jr., Counsel to Vonage, to Chairman Kevin J. Martin (May 9, 2005) (“*Vonage Ex Parte*”).

<sup>2</sup> Press Release, *BellSouth Offers VoIP Providers Additional Options To Connect E911 Calls* (May 5, 2005).

<sup>3</sup> Ex Parte Letter from Robert W. Quinn, Jr., Federal Government Affairs – Vice President, AT&T, to Marlene Dortch, Secretary, FCC (May 9, 2005) (“*AT&T Ex Parte*”).

Furthermore, nomadic VoIP is not the problem that requires the Commission's immediate attention. First, nomadic use of VoIP appears to be relatively limited. Although the percentage of customers who use VoIP service nomadically is not known with certainty, AT&T has indicated that at least 5% of its CallVantage customers may fit within this category.<sup>4</sup> Second, nomadic users of VoIP are unlikely to have the same expectations about reaching a 9-1-1 operator and are likely to have other options for dialing 9-1-1 in the case of an emergency. For example, a VoIP customer from Washington, D.C., with a telephone number assigned to New York who is staying in a hotel in San Francisco is unlikely to use his computer to reach 9-1-1 in the case of emergency; instead, he is more likely to pick up the hotel phone and dial 9-1-1. Indeed, according to AT&T, a number of customers that use VoIP for nomadic purposes "rely on VoIP for second or third line use and maintain a primary wireline service that enables E911 access."<sup>5</sup>

The more immediate problem is with respect to fixed VoIP subscribers, who generally purchase VoIP service as a less-expensive substitute for wireline voice service and who are unlikely to care about or take advantage of the nomadic aspects of VoIP. A fixed VoIP subscriber who has replaced wireline voice service with VoIP should have every expectation that he or she can reach emergency service personnel when dialing 9-1-1 from home or place of business. Indeed, the recent incidents involving Vonage customers who were unable to reach an emergency operator – such as the young girl in Houston, Texas who tried to contact 9-1-1 when two would-be robbers entered her home and shot her parents and the more recent death of a 3-month old girl in Florida – involved fixed VoIP subscribers.<sup>6</sup> There is simply no reason, and Vonage offers none, why VoIP providers could not ensure that their fixed VoIP subscribers have E-9-1-1 access within 120 days of a Commission order.<sup>7</sup>

While Vonage insists that it "needs only the same access to 9-1-1 infrastructure as is currently available to CMRS [providers],"<sup>8</sup> BellSouth offers such access to Vonage and other VoIP providers. Today BellSouth provides E-9-1-1 connectivity to CMRS providers based on industry standards. The connectivity to the E-9-1-1 tandem network is a negotiated arrangement and requires the purchase by the CMRS provider of a minimum of two redundant trunks from the CMRS switch. Additional facilities are required between the Mobile Position Center ("MPC")

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<sup>4</sup> *AT&T Ex Parte*, at 4.

<sup>5</sup> *Id.* Although Vonage "conservatively estimates" that 20 to 30 percent of its customers "regularly use their devices in a portable fashion," *Vonage Ex Parte* at 3, Vonage does not explain how this estimate was calculated or whether these customers have other options for reaching 9-1-1 in the event of an emergency.

<sup>6</sup> See, Oates, *Parents Blame Vonage over Girl's Death*, *The Register* (May 10, 2005) (available at [www.theregister.com.uk/2005/05/10/vonage\\_accused\\_over\\_911\\_death/](http://www.theregister.com.uk/2005/05/10/vonage_accused_over_911_death/)).

<sup>7</sup> AT&T estimates that approximately 76% of its CallVantage subscribers purchase native telephone numbers, and, according to AT&T, it envisions no difficulty in providing E-9-1-1 service to the vast majority of these customers within six months. *AT&T Ex Parte* at 2.

<sup>8</sup> *Vonage Ex Parte* at 6.

and the Automatic Location Identification (“ALI”) database to dynamically pass the wireless call back number and caller’s location information.

Determining the proper Public Safety Answering Point (“PSAP”) to which wireless 9-1-1 calls should be routed is a matter that must be negotiated between the CMRS provider and the PSAPs in the serving areas. This includes the CMRS provider negotiating directly with the proper PSAP to receive calls in the event of a failure of the Automatic Number Identification (“ANI”) function. In the event of such a failure, all 9-1-1 calls will default route to the negotiated PSAP. Once agreement has been reached between the CMRS provider and the PSAP, BellSouth is notified, and BellSouth works with the CMRS provider to identify which E-9-1-1 selective routers should be used to route calls to a specific PSAP and to provide information for ordering and interfacing with the BellSouth ALI databases.

In BellSouth’s region, the CMRS provider must assign the pANI (pseudo-Automatic Number Identification) from the CMRS provider’s number pool, which must be geographically correct for the servicing area.<sup>9</sup> CMRS providers also must work directly with the BellSouth ALI database vendor, Intrado to include the pANI numbers in the appropriate security tables and to identify the appropriate MPC interface to invoke for dynamically updating the ALI database as 9-1-1 calls are passed to the PSAP. The CMRS provider must contact Intrado for all database related steps necessary for the establishment and maintenance of database records and interfaces to the ALI computers. CMRS providers also must post valid records in the E-9-1-1 database prior to testing or turning up service and must ensure that all data records sent to the database have a Master Street Address Guide (“MSAG”) valid address.

Using the CMRS offering as the baseline, BellSouth is offering equivalent 9-1-1 infrastructure network access to VoIP providers. First, as Vonage requests, BellSouth will provide access to its E9-1-1 or selective routers, and the VoIP provider is responsible for purchasing a minimum of two trunks for each E9-1-1 selective router. The VoIP provider also is responsible for establishing a Point of Interface within the E9-1-1 tandem serving area and for providing the IP to TDM conversion or Emergency Service Gateway (ESGW) function from its Point of Interface to the E9-1-1 selective routers. Once the Point of Interface and trunks are established, BellSouth will provide transport of the voice call and the ANI to the designated PSAP.

Second, the VoIP provider is responsible for coordination with the PSAPs to agree on addressing formats, coordinate service areas and obtain the associated routing, default routing and contingency routing requirements, which must subsequently be provided to BellSouth. The VoIP provider also is responsible for providing the caller’s location information and negotiating approval of the use of data fields in the ALI display with the PSAP. In BellSouth’s region, CMRS providers -- and not BellSouth -- perform this function today.

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<sup>9</sup> The pANI is the telephone number that can be used to designate a specific cell antenna face (referred to as ESRD or Emergency Services Routing Digits) or the appropriate PSAP (referred to as ESRK -- Emergency Services Routing Keys -- for CMRS providers or ESQK – Emergency Services Query Key – for VoIP providers).

Third, the VoIP provider is responsible for provisioning and assignment of ANI and pANI that are local to the E9-1-1 Selective Router from its own pool of numbers. Although Vonage apparently believes that BellSouth should be required to administer pANI assignment and provisioning, in BellSouth's region, CMRS providers – and not BellSouth – perform this function today. If Vonage is only seeking the equivalent access to 9-1-1 infrastructure as CMRS providers enjoy, as Vonage claims, then Vonage should administer pANI assignment and provisioning, just as CMRS providers currently do in BellSouth's region.

Fourth, BellSouth will provide database services via Intrado which includes edits, posting, and return of errors for resolution to the VoIP provider. The VoIP provider is responsible for providing valid location subscriber records in the required format. Although BellSouth also will provide interface and dynamic database services, the VoIP provider is responsible for obtaining connectivity to the ALI database for MPC/VPC (Mobile Positioning Center/VoIP Positioning Center) connectivity on an IP level. The VoIP provider also is responsible for nomadic subscriber records (dynamic updates) in the MPC/VPC. BellSouth does not provide MPC/VPC service today, although it can be obtained through a third party vendor offering such services in BellSouth's region, which currently include Intrado, TeleCommunications Systems Inc. (TCS), and Syniverse.

Fifth, utilizing BellSouth's offering, a VoIP provider would send the appropriate pANI (or ESQK) to the BellSouth E-9-1-1 tandem for routing the call to the appropriate PSAP as well as for retrieval of the ALI information, which would have been dynamically updated with the caller's out-of-area telephone number in the ALI database using the MPC/VPC interface. Thus, BellSouth's offering enables a VoIP provider to provide 9-1-1 service to customers with out-of-area or "non-native" telephone numbers, as Vonage seeks to do.

The offering outlined above should more than adequately meet the needs of Vonage and any other VoIP provider that seeks to offer emergency services to its customers. Indeed, according to Vonage, all it needs to "provide a complete 9-1-1 solution" is access to the 9-1-1 selective routers and "access to the wireless overlay solution."<sup>10</sup> BellSouth's recent offering provides Vonage with such access.

Of course, VoIP providers have other alternatives in offering 9-1-1 service to their customers. In fact, in a recent report published by the Voice on the Net ("VON") Coalition, 100% of the VoIP providers surveyed indicated that they had ensured that when their customers dial 9-1-1, the call gets routed to a designated Public Safety Answering Point (PSAP).<sup>11</sup> The report also states that "for fixed users, 60% of the survey respondents who provide VoIP replacement residential phone service indicate they offer 9-1-1 access today with automatic call back number and location information to emergency call centers like traditional fixed wireline

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<sup>10</sup> *Vonage Ex Parte* at 2.

<sup>11</sup> Voice On The Net Coalition, "9-1-1: Answering the Call for 9-1-1 Emergency Services in an Internet World," at 3 (January 2005).

service.”<sup>12</sup> Obviously, VoIP providers that have made the commitment to support public safety by providing 9-1-1 capability to their customers can readily do so, notwithstanding Vonage’s claims to the contrary.

Although Vonage argues that it cannot provide 9-1-1 service through competing local exchange carriers (“CLECs”), such arguments are unpersuasive. First, while claiming that 3% of the nation’s households are not served by any CLECs, Vonage correctly notes that such areas tend to be the “most rural in the country.” However, it unclear the extent to which broadband is available in those geographic areas. Because a broadband connection is required in order for VoIP to function, the more telling statistic would be the percentage of households in areas where broadband is available that are not served by a single CLEC – a statistic that Vonage does not provide.

Second, while insisting that providing 9-1-1 service through a CLEC “would not benefit ‘nomadic’ users,” Vonage does not appear to dispute that 9-1-1 service can readily be provided for fixed VoIP purposes through an arrangement with a CLEC. In fact, this is the preferred method by which other VoIP providers are offering E-9-1-1 service to their customers.

Third, Vonage’s complaint that it “would have to make arrangements with many different CLECs” in order to provide “maximum coverage” rings hollow. Offering a nationwide communications service as a substitute for traditional wireline telephone service takes work. It also should involve some responsibility to protect the public safety by ensuring access to 9-1-1 service. Even though Vonage has been offering VoIP service since 2001, Vonage did not get serious about connecting to BellSouth’s 9-1-1 network until early 2005 and only after the incident in Texas that resulted in a lawsuit against Vonage by the Texas Attorney General. Had Vonage been more proactive in ensuring that its customers were able to reach an emergency operator regardless of the technology they have chosen for their voice service, many of the problems Vonage has encountered could have been avoided.

BellSouth believes that ensuring that customers can request and receive emergency service is fundamentally important, and it should not matter that a customer needing to reach 9-1-1 has decided to buy voice service from a VoIP provider instead of a traditional telephone company. Thus, BellSouth strongly supports an order from the Commission requiring that VoIP providers make available 9-1-1 and E-9-1-1 service to their customers, which BellSouth believes would be consistent with the public interest.

However, BellSouth strongly disagrees with Vonage’s insistence that the Commission must give VoIP providers “an enforceable right to access the 9-1-1 infrastructure” and its position that the Commission has the “clear statutory authority” to do so. No dispute exists that incumbent local exchange carriers have proactively made available various options for VoIP providers to access the 9-1-1 infrastructure. Even though under no legal obligation to do so, BellSouth has made available to VoIP providers access to its 9-1-1 selective routers because 9-1-1 access is a matter of public safety. Other carriers, including Verizon, Qwest, and SBC, have

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<sup>12</sup> *Id.* at 6.

done likewise.<sup>13</sup> Thus, there is simply no need for the Commission to “order” that carriers provide access that has voluntarily been made available.

Furthermore, Vonage’s desire to obtain the same statutory rights enjoyed by carriers is legally indefensible as well as disingenuous. While relying upon the Commission’s “ancillary authority” over “Title II ILECs,” nothing in the Communications Act authorizes the Commission to require that common carriers provide access to their networks to non-carriers. As the D.C. Circuit recently noted, and which Vonage apparently overlooks, “the FCC’s power to promulgate legislative regulations is limited to the scope of the authority Congress has delegated to it.”<sup>14</sup> If Congress had intended for the Commission to bestow upon non-carriers such as Vonage the same rights enjoyed by carriers, Congress certainly could and would have said so.

The only specific statute cited by Vonage in support of its position that the Commission has the “clear statutory authority” to mandate access to the 9-1-1 infrastructure is 47 U.S.C. § 251(e)(3). Section 251(e)(3) provides that:

The Commission and any agency or entity to which the Commission has delegated authority under this subsection shall designate 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance. *The designation shall apply to both wireline and wireless telephone service.* In making the designation, the Commission (and any such agency or entity) shall provide appropriate transition periods for areas in which 9-1-1 is not in use as an emergency telephone number on the date of enactment of the Wireless Communications and Public Safety Act of 1999

47 U.S.C. § 251(e)(3) (emphasis added). This section addresses only numbering administration, and its requirements apply by their plain terms to wireline and wireless carriers. Section 251(e)(3) does not address network access and cannot reasonably be read to entitle non-carriers to such access as Vonage proposes.<sup>15</sup>

Finally, Vonage erroneously asserts that “any refusal by an ILEC to provide VoIP providers access to the selective routers and to pANIs and other resources associated with E-9-1-1 functionality ... would clearly constitute unreasonable discrimination in violation of Section

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<sup>13</sup> See Ex Parte Letter from Kathleen Grillo, Vice President – Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, at 2 (May 11, 2005); Charny, *Biggest Bell to Hand 911 Access to VoIP Operators*, News.Com (May 11, 2005) (available at <http://news.com>); Jackson, *Qwest Agrees to Provide E-911 Access*, Ecommerce Times (May 12, 2005) (available at <http://www.ecommercetimes.com/rsstory/42549.html>).

<sup>14</sup> *American Library Ass’n v. FCC*, Case No. 04-1037, slip op. at 16 (May 6, 2005) (citations omitted).

<sup>15</sup> Vonage’s reliance upon the Commission’s rules is misplaced. *Vonage Ex Parte*, at 7 (citing 47 C.F.R. § 64.3001). Even if Vonage’s interpretation of the Commission’s rules were correct, which is not the case, an agency’s authority comes from Congress, not from rules the agency decides to promulgate. See, e.g., *American Library Ass’n v. FCC*, Case No. 04-1037, slip op. at 16 (May 6, 2005).

Ms. Marlene H. Dortch

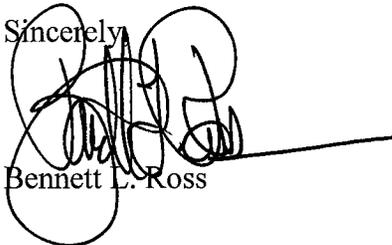
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202(a) of the Act.” The hallmark of the “unreasonable discrimination” prohibited by Section 202(a) is that similarly situated entities are being treated differently.<sup>16</sup> Vonage is not “similarly situated” to a CLEC, CMRS provider, or any other carrier. In fact, Vonage has gone to great lengths to avoid being subjected to the same legal obligations that apply to such carriers and thus can hardly be heard to complain about it not receiving the same benefits that carriers enjoy. In any event, BellSouth has agreed to provide Vonage and other VoIP providers with the same access to the 9-1-1 network that BellSouth makes available to CMRS providers, which renders this alleged discrimination issue moot.

Please include a copy of this letter in the record in the above-referenced proceedings. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "Bennett L. Ross", written over a horizontal line. The signature is somewhat stylized and overlaps the line.

Bennett L. Ross

BLR:kjw  
#585160

cc: Dan Gonzalez  
Michelle Carey  
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Nicholas Alexander  
Tim Stelzig

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<sup>16</sup> See, e.g., *American Message Centers v. FCC*, 50 F.3<sup>rd</sup> 35 (D.C. Cir. 1995) (provider failed to establish discrimination by failing to identify specific instance in which carrier treated another customer in like circumstances differently).